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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Application by Verizon New Jersey Inc., Bell	)	
Atlantic Communications, Inc. (d/b/a Verizon	)	WC Docket No. 02-67
Long Distance), NYNEX Long Distance	)	
Company (d/b/a Verizon Enterprise	)	
Solutions), Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in New Jersey	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2002 **Released: June 24, 2002**

By the Commission: Commissioner Copps issuing a statement.

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Paragraph

I. INTRODUCTION

1. On March 26, 2002, Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. – collectively, Verizon – filed this application (NJ II) pursuant to section 271 of the Communications Act of 1934, as amended,[1] for authority to provide in-region, interLATA service originating in the state of New Jersey.[2] Although Verizon initially filed its section 271 application for New Jersey with this Commission on December 20, 2001 (NJ I), that application was withdrawn on March 19, 2002.[3] We grant the NJ II application in this Order based on our conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in New Jersey to competition.

2. In granting this application, we recognize the work of the New Jersey Board of Public Utilities (New Jersey Board) in laying the foundation for approval of this application. The New Jersey Board conducted proceedings concerning Verizon's section 271 compliance that

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[1] We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. § 151 *et seq.*

[2] *See Comments Requested on the Application By Verizon New Jersey Inc. for Authorization to Provide In-Region, InterLATA Service in the State of New Jersey*, WC Docket No. 02-67, Public Notice, DA 02-718 (WCB rel. Mar. 26, 2002) (*NJ II Public Notice*).

[3] *See Application of Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in New Jersey*, CC Docket No. 01-347, Order, DA 02-667 (CCB rel. Mar. 20, 2002) (*NJ I Termination Order*). We refer to the current section 271 application (filed on March 26, 2002) as "NJ II."

were open to participation by all interested parties.[4] In addition, the New Jersey Board adopted a broad range of performance measures and standards, as well as an Incentive Plan designed to create a financial incentive for post-entry compliance with section 271. Moreover, the New Jersey Board has committed itself to actively monitor Verizon's continuing efforts to open its local markets to competition in a sustainable manner.[5] As the Commission has repeatedly recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the Act serve a vitally important role in the section 271 process.[6]

3. Verizon's NJ I application stated that competing carriers in New Jersey served approximately 564,000 lines, approximately 57,000 of which were residential, using all three entry paths available under the Act.[7] At the time the NJ I application was filed, competitors across the state served approximately 361,000 lines solely over their own facilities; approximately 22,000 lines through unbundled network element platforms (UNE-platforms); and approximately 182,000 lines through resale.[8] Since the NJ I application was filed, Verizon notes that competing carriers have added approximately 50,000 new lines in New Jersey, and that the number of lines being served by competitors using UNE-platforms has grown to nearly 40,000 lines.[9] In addition, Verizon asserts that competitors exchange approximately 1.9 billion minutes of traffic each month with Verizon over almost two-thirds as many trunks as Verizon has

[4] On September 5, 2001, Verizon filed an application with the New Jersey Board of Public Utilities seeking approval to pursue section 271 authority for the state. *See* New Jersey Board NJ I Comments at 2. The New Jersey BPU completed its review and approved the NJ I application on January 9, 2002.

[5] *See, e.g.,* New Jersey Board NJ I Comments at 24 (Verizon required to periodically provide BPU with copies of sample bills to confirm that it is continuing to bill lawful rates for unbundled network elements)), 41 (Verizon required to maintain manual review and balancing procedures in New Jersey until BPU staff is satisfied that such procedures are not necessary to produce adequately balanced electronic bills for CLECs).

[6] *See, e.g., Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Record 17419, 17421, at para. 3 (2001) (*Verizon Pennsylvania Order*); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, at para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, at para. 2 (2001) (*Verizon Massachusetts Order*).

[7] Verizon NJ I Application at 1 and App. A, Vol.3, Declaration of William E. Taylor (Verizon NJ I Taylor Decl.), Attach. 1 at 3.

[8] Verizon NJ I Application at 7.

[9] *See* Verizon NJ II Application at 3-4 and App. A, Tab C, Declaration of John A. Torre (Verizon NJ II Torre Decl.), Attach. 1, at para. 2. Verizon further states that the number of residential lines served by competitors using their own facilities and using UNE-platforms have each more than doubled as well. *Id.*

connecting its switches in its own interoffice network in New Jersey.[10] Verizon also states that competitors have access to approximately 90 percent of Verizon's access lines in New Jersey through approximately 940 collocation arrangements.[11]

II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.[12] Under section 271, Congress requires that the Commission review BOC applications to provide such service in consultation with the affected state and the Attorney General.[13]

5. The New Jersey Board conducted an extensive proceeding, which was open to participation by all interested parties, to facilitate competition in local exchange markets, starting with adopting carrier-to-carrier guidelines in May 2000.[14] On September 5, 2001, Verizon made a compliance filing for section 271 approval with the New Jersey Board.[15] The Board proposed a new Incentive Plan (IP) in October 2001, which was subsequently approved and finalized, with some modifications, on January 10, 2002.[16] On January 14, 2002, the New Jersey Board recommended that this Commission grant Verizon's application for authorization to provide in-

[10] *Id.* at 20.

[11] *Id.* at 22-23.

[12] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[13] The Commission has summarized the relevant statutory framework in prior orders. *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001); *Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18359-61, paras. 8-11 (2000) (*SWBT Texas Order*); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, paras. 17-20 (1999) (*Bell Atlantic New York Order*), *aff'd, AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

[14] New Jersey Board NJ I Comments at 1.

[15] *Id.* at 2.

[16] *Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631, *Investigation Regarding the Status of Local Exchange Competition in New Jersey*, Docket No. TX98010010, Order Approving Incentive Plan, (rel. Jan. 10, 2002) (IP Order). The IP proposed by the Board in October 2001(NJ Incentive Plan) is attached to the IP Order.

region, interLATA services in New Jersey.[17] The New Jersey Board also conducted a lengthy pricing proceeding, beginning in 1997 and culminating in a final order on pricing for unbundled network elements on March 6, 2002.[18]

6. The Department of Justice recommends approval of this application, subject to the Commission "satisfying itself" regarding Verizon's checklist compliance for certain pricing and operations support systems (OSS) issues.[19] In particular, it states that,

> [a]lthough Verizon's reduction of hot cut [non-recurring charges] appears to respond to the concern expressed in the Department's Evaluation of its first New Jersey application, it is unclear whether this reduction will remain in effect for a sufficient period of time. Moreover, issues have been raised regarding nondiscriminatory access to Verizon's OSS in New Jersey.[20]

7. As noted above, this is Verizon's second application for section 271 authority in New Jersey. Because the NJ II application was filed so shortly after the NJ I application was withdrawn, and Verizon relies largely on the same evidence in NJ II that it filed to support NJ I, we explicitly stated that parties should incorporate by reference any comments filed in response to NJ I to the extent they wished to rely on those comments in NJ II.[21] A number of commenters from the NJ I proceeding did not file comments in NJ II, and a few who did file in both proceedings did not incorporate their NJ I comments into the record here.[22] To the extent issues raised in NJ I were not incorporated into the record of this proceeding or otherwise placed in this record by NJ II commenters, those issues will not be addressed in this Order, as they are not properly before us in this new proceeding.

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[17] New Jersey Board NJ I Comments at 1. The NJ Board reaffirmed its recommendation that the Commission grant Verizon authority to provide in-region, interLATA services in New Jersey. NJ Board NJ II Comments at 2.

[18] *Investigation Regarding Local Exchange Competition for Telecommunications* Services, Docket No. TX95120631 (Dec. 2, 1997); *Review of Unbundled Network Elements, Rates, Terms, and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Decision and Order (rel. March 6, 2002) (*Final UNE Rate Order* or *New Jersey BPU Final UNE Rate Order*).

[19] Department of Justice NJ I Evaluation at 8-9; Department of Justice NJ II Evaluation at 9-10.

[20] Department of Justice NJ II Evaluation at 9 (footnotes omitted).

[21] *See NJ II Public Notice* at 1-2.

[22] The following parties filed comments in both NJ I and NJ II: ASCENT; AT&T; Cavalier; Department of Justice; MetTel; New Jersey Board; NJCTA (reply only in NJ II); NJDRA; Sprint; WorldCom; and XO. Only AT&T, Department of Justice, New Jersey Board, NJCTA, NJDRA, Sprint, WorldCom, and XO explicitly incorporate their NJ I comments by reference. *See* Appendix A for a complete list of parties who submitted comments and replies in this proceeding. To the extent issues raised in NJ I were not incorporated into the record of this proceeding or otherwise placed in this record by NJ II commenters, those issues will not be addressed in this Order, as they are not properly before us in this new proceeding.

III. PRIMARY ISSUES IN DISPUTE

8. In a number of prior orders, the Commission discussed in considerable detail the analytical framework and particular legal showing required to establish checklist compliance.[23] In this Order, we rely upon the legal and analytical precedent established in those prior orders. Additionally, as we began doing with the *Verizon Connecticut Order*, we include comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.[24] In reviewing this application, we examine performance data as reported in carrier-to-carrier reports reflecting service in the period from November 2001 through March 2002.

9. As in our most recent orders on section 271 applications, we focus in this Order on the issues in controversy in the record.[25] Accordingly, we begin by addressing Verizon's compliance with section 271(c)(1)(A), which requires the presence of facilities-based competitors serving both residential and business customers. Next, we discuss Verizon's compliance with checklist item numbers 2 and 4, which encompass access to unbundled network elements and access to unbundled local loops, respectively.[26] We then address checklist item

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[23] *See SWBT Texas Order,* 15 FCC Rcd at 18359-61, 18365-72, 18373-78, paras. 8-11, 21-40, and 43-58; *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, and 43-60; *see also* Appendix C.

[24] *See generally* Appendices B and C.

[25] *See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont,* CC Docket No. 02-7, Memorandum Opinion & Order, FCC 02-118, at para. 9 (rel. Apr. 17, 2002) (*Verizon Vermont Order*); *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island,* CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3311 at para. 19 (rel. Feb. 22, 2002) (*Verizon Rhode Island Order*); *Joint Application By SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant To Section 271 of the Telecommunications Act Of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri,* CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20725, at para. 12 (rel. Nov. 16, 2001) (*SBC Arkansas/Missouri Order*).

[26] We note that the United States Court of Appeals for the District of Columbia Circuit recently opined in two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*Local Competition Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002). The court's decision addressed both our UNE rules and our line sharing rules. The Commission is currently reviewing its unbundled network elements rules, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 2278 (2001), and recently extended the reply comment date to allow parties to incorporate their review and analysis of the D.C. Circuit's recent decision. *Wireline Competition Bureau Extends Reply Comment Deadline for Wireline Broadband and Triennial Review Proceedings*, Public Notice, DA 02-1284 (May 29, 2002). Further, the court stated that "the (continued….)

numbers 1, 8, 13 and 14, which cover interconnection and collocation issues, directory listings, reciprocal compensation, and resale, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Verizon has satisfied these requirements. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

A. Compliance With Section 271(c)(1)(A)

10. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, the BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B).[27] To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business customers."[28] The Commission has further held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"[29] which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.[30] The Commission has interpreted Track A not to require any particular level of market penetration, however, and the D.C. Circuit has affirmed that the Act "imposes no volume requirements for satisfaction of Track A."[31]

11. We conclude, as the New Jersey Board did,[32] that Verizon satisfies the requirements of Track A in New Jersey. Verizon relies on interconnection agreements with MetTel, eLEC, and Broadview in support of its Track A showing, and we find that each of these carriers serves more than a *de minimis* number of end users predominantly over its own facilities

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Line Sharing Order must be vacated and remanded." *Id.* The court also stated that it "grant[ed] the petitions for review and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id.*

[27] 47 U.S.C. § 271(c)(1).

[28] *Id.*

[29] *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

[30] *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; *see also Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, para. 78 (1997) (*Ameritech Michigan Order*).

[31] *Sprint v. FCC*, 274 F.3d at 553-54; *see also SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) ("Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a 'competing' provider.").

[32] New Jersey Board NJ I Comments at 9.

and represents an "actual commercial alternative" to Verizon in New Jersey.[33] Specifically, MetTel provides telephone exchange service to both residential and business subscribers in New Jersey primarily through UNE-platforms.[34] Broadview and eLEC provide service to both residential and business customers in New Jersey through UNE loops, UNE-Platform, and resale.[35] Verizon notes that each of these carriers has increased the number of residential lines it serves since the time Verizon filed its NJ I application.[36] We also note that the New Jersey Board has stated its intention to take additional measures to further encourage local entry by competitors of Verizon New Jersey, if necessary.[37]

12. Only one commenter disputes Verizon's compliance with Track A requirements.[38] The New Jersey Division of the Ratepayer Advocate (NJDRA) argues that Verizon should fail Track A because: (1) the numbers that Verizon reports for Track A are wrong; (2) even if those numbers are correct, the amount is *de minimis*; and, (3) Verizon does not provide evidence that the residential customers served by competitive LECs are not test customers.[39]

13. We disagree. In its application, Verizon provided estimates of the number of residential and business customers receiving facilities-based service from all the competing LECs

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[33] Verizon NJ I Application at 7; Verizon NJ I Taylor Decl., Attach. 1, at paras. 23-27 (citing confidential portion); updated in Verizon NJ II Torre Decl., Attach. 1 at Table 1 (citing confidential portion). According to Verizon, competing LECs now serve approximately 2,200 residential lines through UNE-platform or UNE loops. The numbers of customers attributed to each competing LEC are available on the record pursuant to the protective order. Letter from Clint Odom, Verizon, to William F. Caton, Acting Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed March 29, 2002) (Verizon NJ II Mar. 29 *Competitive Lines Ex Parte* Letter) at 2 (citing confidential portion). Verizon also notes that many other competing LECs, such as AT&T, WorldCom, Cavalier, and Adelphia, serve business customers in New Jersey over their own facilities. Verizon NJ I Taylor Decl. Attach. 1, at paras. 28-48 (citing confidential portion), updated in Verizon NJ II Torre Decl., Attach. 1, at paras. 5-8 (citing confidential portion); *see also SWBT Oklahoma Order*, 12 FCC Rcd at 8695, para. 14.

[34] Verizon NJ I Taylor Decl., Attach. 1 at para. 27 (citing confidential portion), updated in Verizon NJ II Torre Decl. at para. 6 (citing confidential portion).

[35] Verizon NJ I Taylor Decl., Attach. 1 at paras. 23-26 (citing confidential portion), updated in Verizon NJ II Torre Decl. at para. 6 (citing confidential portion).

[36] Verizon NJ II Reply Appendix, Reply Declaration of John A. Torre (Verizon NJ II Torre Reply Decl.), Attach. 1, at para. 4.

[37] New Jersey Board NJ II Comments at 2.

[38] Many parties raise concerns about the number of facilities-based lines served by competitive LECs. *See* discussion under Public Interest Analysis in Section VI.C., below.

[39] NJDRA NJ I Comments at 17; NJDRA NJ II Comments at 2. Additionally, two commenters claim that the apparent increase in the number of competitive LEC lines reflects only a reallocation among already existing competitive LEC lines. NJDRA NJ II Comments at 3; Sprint NJ II Comments at 2. We find this argument irrelevant. The Commission has previously concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers. *See* Appendix C at para. 15.

on which Verizon relies to make a Track A showing, including MetTel.[40] The record demonstrates that MetTel alone serves a sufficient number of residential customers via UNE-platform and, therefore, is an actual commercial alternative to Verizon in New Jersey.[41] We note that MetTel, a participant in this proceeding at both the state and federal level, has not disputed those numbers.[42] Nor have the other competing LECs disputed the numbers that Verizon attributes to them for purposes of Track A. Also, we reject NJDRA's argument that Verizon should fail Track A because only a small percentage of residential access lines are currently served by competing LECs.[43] As we have noted in previous orders, Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.[44] Finally, we find no evidence in the record to support NJDRA's speculative statement that the residential customers served by the competing LECs are test customers. Again, none of the competing LECs we rely on for purposes of Track A have disputed Verizon's contention that they are providing commercial local exchange service to these customers.

B. Checklist Item 2 – Unbundled Network Elements

14. Checklist item two of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[45] Section 251(c)(3) requires incumbent LECs to provide

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[40] Verizon NJ II Torre Decl., Attach. 1 at para. 6 (citing confidential portion), updated in Verizon NJ II Mar. 29 *Competitive Lines Ex Parte* Letter at 2 (citing confidential portion) and Verizon NJ II Torre Reply Decl., Exhibit 1 (citing confidential version).

[41] Verizon NJ II Torre Decl., Attach. 1 at para. 6 (citing confidential portion) and Verizon NJ II Mar. 29 *Competitive Lines Ex Parte* Letter at 2 (citing confidential portion). *See* also New Jersey Board NJ I Comments at 8-9. We note that carriers other than MetTel (either singly or in combination) would also satisfy Track A.

[42] MetTel filed comments and reply comments opposing Verizon's application. *See* MetTel NJ I Comments; MetTel NJ I Reply; MetTel NJ II Comments; and MetTel NJ II Reply. We note the Commission's reliance on a similar showing by SWBT that it satisfied Track A using Ionex, which was explicitly approved by the United States Court of Appeals for the D.C. Circuit. The Court found that since Ionex had been a party to the proceeding, Ionex had been put on notice "that [SWBT] was using Ionex's service to satisfy Track A. Ionex uttered not a peep in protest, correction or qualification." *Sprint v. FCC*, 274 F.3d at 562.

[43] NJDRA NJ I Comments at 18.

[44] *See, e.g., Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77; *Sprint v. FCC*, 274 F. 3d at 553-54.

[45] 47 U.S.C. § 271(B)(ii). Overturning a decision issued by the Eighth Circuit Court of Appeals in 1997, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon v. FCC*, Nos. 00-511, 00-555, 00-587, 00-590, and 00-602, 2002 WL 970643 at 22 (Sup. Ct. May 13, 2002). (In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999).) For purposes of this application, we need not consider Verizon's compliance with (continued….)

"nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[46]

1. Pricing of Unbundled Network Elements

15. Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.[47] Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements.[48]

16. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996 and vacated them in 1997,[49] the U.S. Supreme Court restored the Commission's pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.[50] On remand, the Eighth Circuit concluded that specific Commission pricing rules were contrary to Congressional intent but stayed the issuance of its mandate pending review by the Supreme Court.[51] On May 13, 2002, day 48 of the 90-day application period for this section 271 application, the Supreme Court upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs and

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these new rules, because Verizon filed NJ II prior to the Supreme Court's decision. *See SWBT Texas Order*, 15 FCC Rcd at 18367-68, paras. 28-29 (concluding that, for purposes of evaluating compliance with checklist item 2, we require SWBT to demonstrate that it is currently in compliance with the rules in effect on the date of filing, but do not require SWBT to demonstrate that it complies with rules that become effective during the pendency of its application).

[46] 47 U.S.C. § 251(c)(3).

[47] *Id.* § 252(d)(1).

[48] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-.515.

[49] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997).

[50] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) "explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies." *Id.* at 380. The Court determined that section 251(d) provides evidence of an express jurisdictional grant by requiring that "the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section." *Id.* at 382. The pricing provisions implemented under the Commission's rulemaking authority, according to the Court, do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as "[i]t is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances." *Id.* at 384.

[51] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications, Inc. v. FCC*, 531 U.S. 1124 (2001) (argued Oct. 10, 2001). *See also Iowa Utils. Bd. v.. FCC*, No. 96-3321, slip op. (8th Cir. Sept. 25, 2000).

"reverse[d] the Eighth Circuit's judgment insofar as it invalidated TELRIC as a method for setting rates under the Act."[52] Accordingly, the Commission's rules have been in effect throughout the pendency of this application.

17. In applying the Commission's TELRIC pricing principles in this application, we note that different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here. We do not conduct a *de novo* review of a state's pricing determinations.[53] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[54]

18. Based on the evidence in the record before us for this application, we find that Verizon's UNE rates in New Jersey are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates in New Jersey satisfy checklist item two.

a. Background

19. By Generic Order dated December 2, 1997, the New Jersey Board originally set rates for various unbundled network elements.[55] Consistent with its statement in the Generic Order that it would regularly monitor Verizon's New Jersey UNE rates, the New Jersey Board announced on June 1, 2000, that it would commence a new UNE rate proceeding.[56]

20. Various parties challenged the Generic Order. On June 6, 2000, five days after the New Jersey Board announced the new cost proceeding, a federal district court judge affirmed in part, reversed in part, and remanded in part the Generic Order.[57] On remand, the New Jersey Board commenced the new cost docket to address not only the remanded issues but also all

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[52] *Verizon Communications Inc. v. FCC*, __ U.S. ___; 122 S.Ct. 1646, 1679 (2002).

[53] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55 (citations omitted). *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

[54] *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55.

[55] The new cost docket was captioned *Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631 (Dec. 2, 1997) (*Generic Order* or *New Jersey BPU Generic UNE Order*).

[56] *Review of Unbundled Network Elements, Rates, Terms, and Conditions of Bell Atlantic New Jersey, Inc.* (Docket No. TO00060356).

[57] *AT&T v. Bell Atlantic-New Jersey, Inc.*, No. 97-5762 (KSH), slip op. at 2 (June 6, 2000) (unpublished opinion).

applicable FCC orders issued since 1997.[58] The proceeding covered the entire array of UNE rates and included 17 days of hearings over 15 weeks, 26 expert witnesses, over 265 exhibits, and more than 3900 pages of transcripts.[59] Parties filed extensive initial and reply briefs on June 18 and July 13, 2001, respectively.[60]

21. The new UNE rate proceeding concluded at the November 20, 2001 agenda meeting of the New Jersey Board. At that time, the New Jersey Board approved rates for certain recurring and non-recurring elements and adopted inputs and assumptions for all other rate elements.[61] The New Jersey Board also directed Verizon to re-run certain cost models to reflect Board- established inputs and assumptions.[62] In filings dated December 3 and 10, 2001, Verizon submitted the results of those cost model re-runs. One week later, on December 17, 2001, the New Jersey Board issued its Summary Order memorializing the decisions announced at the November 20, 2001 agenda meeting. The Summary Order stated that "[a] final Order will be issued in this matter fully setting forth the Board's analysis of the issues, the positions of the parties, and the reasoning underlying the Board's determinations."[63]

22. On December 20, 2001, before a final order had been issued, Verizon filed its first application to provide interLATA service in New Jersey.[64] The New Jersey Board issued a lengthy Consultative Report on January 14, 2002, which recommended that the Commission approve Verizon's NJ I application.[65] The Department of Justice filed its evaluation of the NJ I application on January 28, 2002, concluding that Verizon's "reduced recurring rates appear to be generally within the broad range of TELRIC previously described by the FCC" in other states.[66] The Department of Justice cautioned, however, that "the non-recurring charges for 'hot cuts' seem to have been increased so that they are now significantly higher in New Jersey than in New York or Pennsylvania."[67] Noting that Verizon provided "[n]o justification for this difference in

[58] *Board's Review of Unbundled Rates, Terms, and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356, Telecommunications Summary Order of Approval at 1 (rel. Nov. 20, 2001) (Summary Order or *New Jersey BPU Summary Order*).

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.* at 2.

[64] *See* Verizon NJ I Application.

[65] New Jersey Board NJ I Comments at 1.

[66] Department of Justice NJ I Evaluation at 7 and n.27 (noting that the New York Commission voted on January 23, 2002, to approve significant reductions in its UNE prices).

[67] *Id.* at 7. A "hot cut" is the process of converting a customer from one network, usually the incumbent LEC's, to a UNE-loop served by another carrier. The hot cut process is discussed below in Section III.B.1.c.

the [then-]current record," the Department of Justice stated that it would "rely upon the Commission for its ultimate determination of whether the prices supporting this application are appropriately cost-based."[68]

23. On March 6, 2002, day 76 of the NJ I application, the New Jersey Board released its Final UNE Rate Order.[69] The New Jersey Board filed that order with this Commission, and, on March 8, 2002, we issued a public notice asking for expedited comment on it.[70] On March 19, 2002, day 89 of the NJ I application, Verizon notified the Commission that it was withdrawing its application as a result of "process concerns" that were raised with respect to the non-recurring charge for performing a hot cut.[71] The next day, Verizon informed the New Jersey Board that, effective immediately, it would reduce the effective hot cut rate in New Jersey to the same level – $35 – that was recently made effective in New York.[72]

24. On March 26, 2002, Verizon filed its second application to provide interLATA service in New Jersey.[73] Both the Department of Justice and the New Jersey Board recommended approval of the NJ II application,[74] although the Department of Justice stated that "the Commission should also assure itself that Verizon's commitment [to provide new, lower hot cut rates] will remain in place for a sufficient time to allow competitive entry."[75] Commenters, however, were not supportive of the NJ II application. They reiterated pricing concerns from the NJ I application and also raised new pricing issues. In analyzing these issues and consistent with prior section 271 orders, our discussion is divided into two groups – recurring charges and non-recurring charges.[76]

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68 *Id.* at 7-8 (citations and quotation marks omitted).

69 *New Jersey BPU Final UNE Rate Order.*

70 *Comments Requested in Connection With Verizon's Section 271 Application for New Jersey*, CC Docket No. 01-347, Public Notice, DA 02-580 (March 8, 2002).

71 Letter from Michael E. Glover, Senior Vice President, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-347 (filed March 19, 2002).

72 *See* Verizon NJ II Application at 16.

73 *See id.* at 1-19.

74 New Jersey BPU NJ II Comments at 1-2; Department of Justice NJ II Evaluation at 9-10.

75 Department of Justice NJ II Evaluation at 5.

76 *See, e.g., SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20741-56, paras. 48-75.

b. Recurring Charges

(i) Loop Rates

25. WorldCom contends that the New Jersey Board incorrectly approved Verizon's fiber/copper feeder and fill factor percentages.[77] After reviewing the record, we conclude that the New Jersey Board's decisions are consistent with our TELRIC principles.

26. *Fiber and Copper Feeder.* WorldCom disagrees with Verizon's assumption that 60 percent of feeder will be served on fiber cable with integrated digital loop carrier (IDLC) and that the remaining 40 percent served on copper feeder.[78] Copper feeder could be cheaper, WorldCom suggests, proposing the use of 30 percent fiber feeder and 70 percent copper feeder.[79]

27. The New Jersey Board considered this very issue and approved Verizon's 60/40 split between fiber and copper feeder.[80] WorldCom submits no evidence, however, demonstrating that the New Jersey Board erred approving the use of less than 70 percent copper. In prior section 271 orders, we have approved the use of less copper feeder than the 40 percent adopted by the New Jersey Board.[81] In short, WorldCom presents no arguments or evidence that would cause us to find that these assumptions are inconsistent with TELRIC principles as applied to Verizon in New Jersey.

28. In addition, WorldCom's argument amounts to mere speculation that "copper feeder *may* be cheaper" and that Verizon's use of 60 percent fiber feeder "*appears* to result in higher costs."[82] Such conjecture, especially when viewed against the backdrop of the New Jersey Board's consideration of the precise issue, is not persuasive. We thus reject WorldCom's argument that the use of 60 percent fiber feeder is improper.

29. *Fill Factors.* WorldCom also claims that the New Jersey Board approved unreasonably low fill factors for fiber and copper cable, which allegedly results in overstated loop costs.[83] For distribution cable, the New Jersey Board approved a 53 percent fill factor.

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77 WorldCom NJ I Comments at 12-13. In its NJ II comments, WorldCom incorporated by reference its comments from NJ I. *See* WorldCom NJ II Comments at i.

78 WorldCom NJ I Comments, Tab B, Declaration of Chris Frentrup (WorldCom NJ I Frentrup Decl.), at para. 19

79 *Id.*

80 *New Jersey BPU Final UNE Rate Order* at 65-72; *New Jersey BPU Summary Order* at 6.

81 We have previously approved the use of 100% fiber feeder. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17455-56, para. 59; *Bell Atlantic New York Order*, 15 FCC Rcd at 4086-87, paras. 248-49. *See also AT&T v. FCC*, 220 F.3d at 618-19.

82 WorldCom NJ I Frentrup Decl. at para. 19 (emphasis added).

83 *Id.* at para. 20.

WorldCom points out that the model developed by the Commission to determine entitlement to universal service support, the Synthesis Model,[84] assumes a 75 percent cable fill for all but one density zone.[85] For copper feeder, New Jersey Board approved a 75 percent fill factor, and the Synthesis Model assumes an 82.5 percent fill factor for all but one density zone.[86] WorldCom also states that New Jersey Board approved a 77.5 percent fill factor for fiber feeder, compared to 100 percent assumed in all zones in the Synthesis Model.[87]

30. The New Jersey Board specifically addressed this issue in the Final UNE Rate Order,[88] revising Verizon's proposed fill factors upward after considering all the evidence. According to the New Jersey Board, "[t]he revision to both the copper feeder and fiber feeder fill factors is based upon a calculation of the mid-point between Verizon's actual fill level and the relief point for feeder," a calculation that is "consistent with Verizon's mid-point calculation for loop electronics."[89] The 53 percent for distribution cable was derived from the NJDRA's own analysis, "which calculated the mid-point between embedded fill and objective fill as detailed in Verizon's engineering studies."[90]

31. WorldCom does not contend that the New Jersey Board's fill factor calculation methodology was improper or invalid -- only that the fill factors fall toward the low end of the ranges approved in the Synthesis Model.[91] We reject WorldCom's argument that the generic values that the Commission used in the Synthesis Model are the only appropriate fill factors for New Jersey. First, these values might or might not be appropriate in New Jersey, but that is a fact-intensive, state-specific determination that should be made, in the first instance, by the New Jersey Board. Second, as the Commission has stated in prior section 271 orders,[92] the Synthesis

[84] *Federal-State Joint Board on Universal Service: Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket 96-45, Tenth Report and Order, 14 FCC Rcd 20156, 20166-68, paras. 17-20 (rel. Nov. 2, 1999) (*USF Tenth Report and Order*).

[85] WorldCom NJ I Frentrup Decl. at para. 20.

[86] *Id.*

[87] *Id.*

[88] *New Jersey BPU Final UNE Rate Order* at 83-85 (distribution); 85-86 (copper feeder); 86 (fiber feeder). *See also New Jersey BPU Summary Order* at 4-5.

[89] *New Jersey BPU Summary Order* at 5. *See also New Jersey BPU Final UNE Rate Order* at 85 (noting that Verizon's feeder distribution levels represent "the mid-point between the actual fill levels and the level at which the facility would be required to be relieved under Verizon NJ's engineering guidelines").

[90] *New Jersey BPU Summary Order* at 5. *See also New Jersey BPU Final UNE Rate Order* at 84.

[91] WorldCom NJ I Comments at 13. In the *USF Tenth Report and Order*, the Commission identified the following ranges for fill factors, depending on density zone: feeder (77%-82.5%); distribution (50%-75%). *USF Tenth Report and Order*, 14 FCC Rcd at 20369, App. A.

[92] *Bell Atlantic New York Order*, 15 FCC Rcd at 4085, para. 245; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

Model was developed for the very different purpose of determining high cost support; it may not be appropriate for other purposes.[93] In any event, the Board-approved fill factors are not inconsistent with those that the Commission has approved in prior section 271 orders,[94] and we find no TELRIC errors in the New Jersey Board's analysis of Verizon's fill factors.

(ii) Switching Rates

32. Commenters make four switching arguments. They contend that Verizon improperly double-charges for intra-switch calls. They also argue that Verizon's vertical feature costs should be recovered on a flat-rated basis as part of the line port charge, not on a per minute-of-use (MOU) basis as part of the end office switch usage charge.[95] In addition, they claim that the New Jersey Board improperly approved Verizon's switch vendor discounts. Finally, they argue that Verizon improperly disregards switch usage on weekends and holidays in calculating a switching rate.

33. In addition, WorldCom argues that these TELRIC errors cannot be surmounted by means of a benchmark analysis to switching rates in New York. According to WorldCom, as an initial matter, it is inappropriate to consider switching rates aggregated with signaling and transport for the purpose of a benchmark analysis. WorldCom argues that Verizon's switching rates do not pass a benchmark comparison with New York's switching rates when signaling and transport are removed from the comparison. WorldCom also challenges Verizon's use of state-specific traffic data in a benchmark comparison, arguing instead that a standard set of demand

[93] *See USF Tenth Report and Order*, 14 FCC Rcd at 20172, para. 32 (stating that "it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements," and cautioning "parties from making any claims in other proceedings based upon the input values" in the *USF Tenth Report and Order*), 20369, App. A (listing values).

[94] *BellSouth Louisiana/Georgia Order* at paras. 66-70 (approving 48% fill factor for distribution cable, 69.5% fill factor for copper feeder, and 74% fill factor for fiber feeder in Georgia); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6275-76, para. 80 (53% fill factor for distribution cable); *Verizon Massachusetts Order*, 16 FCC Rcd at 9007, para. 39 (40% fill factor for distribution cable); *Bell Atlantic New York Order* (50% fill factor for distribution cable) (discussed in *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 80).

[95] AT&T argues that Verizon's recovery of vertical feature costs through switching rates, together with other alleged TELRIC errors, overstates switching rates by 149%. *See* Letter from David L. Lawson, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (June 18, 2002) (AT&T NJ II June 18 *Ex Parte* Letter); Letter from David L. Lawson, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at 2 (filed April 30, 2002) (AT&T NJ II April 30 *Ex Parte* Letter). Verizon responds that AT&T improperly excluded engineering, furnishing, and installing costs and wrongly excluded non-conversation time minutes in calculating the 149% figure. Letter from Clint E. Odom, Director, Federal Regulatory, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at 4 (filed June 7, 2002) (Verizon NJ II June 7 *Ex Parte* Letter). *See* also Letter from Clint E. Odom, Director, Federal Regulatory, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 21, 2002). We need not resolve this dispute. As discussed below, we find no TELRIC error in the New Jersey Board's approval of Verizon's method for recovering vertical feature costs. In any event, because we conclude that Verizon's non-loop rates pass a benchmark comparison with New York's non-loop rates, we need not address the merits of AT&T's allegation.

assumptions should be used. In any event, WorldCom contends that the Act does not allow the Commission to perform an aggregated benchmark analysis in the first instance, claiming that each network element must be assessed separately from other elements.

34. Before addressing WorldCom's claims concerning the benchmark analysis, we discuss the four switching arguments summarized above. We then perform a benchmark analysis of non-loop rates in New Jersey and New York and conclude that Verizon's non-loop rates in New Jersey pass such an analysis.

35. *Intra-switch Calls*. The NJDRA and WorldCom allege that Verizon improperly "double charges" for calls that both originate and terminate on the same switch.[96] The commenters claim that Verizon should be allowed to charge only once for such intra-switch calls.

36. Verizon acknowledges that it charges both an originating and terminating charge for all calls, whether intra- or inter-switch.[97] Every call involves originating and terminating activity, Verizon argues, regardless of how many switches are involved in the call.[98] Costs are incurred for both types of activities, and Verizon therefore concludes that it is entirely appropriate to charge the originating rate and the terminating rate for each minute on an intra-switch call.[99]

37. Verizon's methodology is not inconsistent with our handling of this issue in prior applications. In the *Vermont Order*, for example, we noted that state commissions have reached different conclusions on whether to allow the BOC to charge on both originating and terminating MOU on intra-switch calls.[100] Thus, we have not previously concluded that TELRIC dictates a particular result on this issue.

38. In addition, commenters provide no evidence that, in connection with an intra-switch call, Verizon charges originating and terminating functions in a manner inconsistent with how Verizon developed the charges for such functions. For example, if Verizon charged competitors two MOU for every minute of intra-switch call use, but the switching rate had been calculated by treating such calls as consisting of one MOU for every minute of intra-switch call use, then Verizon's intra-switch call practice might well violate TELRIC principles. This is because Verizon would be imposing a per-minute switching price that was calculated based on an inaccurate demand estimate. TELRIC requires that UNE rates "recover costs in a manner that

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96 *E.g.*, WorldCom NJ I Frentrup Decl. at para. 14; NJDRA NJ I Comments at 24. The NJDRA incorporated by reference its NJ I comments in NJ II. *See* NJDRA NJ II Comments at 2 n.2.

97 Verizon NJ I Reply Comments, Tab D, Reply Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ I Garzillo/Prosini Reply Decl.), at para. 10.

98 *Id.*

99 *Id.*

100 *Verizon Vermont Order* at para. 32 and n.106.

reflects the way they are incurred."[101] No commenter argues that the manner in which Verizon developed its switching rates is inconsistent with the manner in which Verizon imposes these rates. We therefore reject commenters' claims that charging both an originating and a terminating rate for every call, regardless of the number of switches involved, is by itself inappropriate or a violation of TELRIC.

39. *Vertical Features.* WorldCom and AT&T also challenge Verizon's inclusion of vertical features in the switching rate.[102] They argue that non-usage-sensitive elements, such as vertical features, should be included with the port charge and not charged on a per-minute basis.[103] We find no TELRIC error in the New Jersey Board's handling of this issue.

40. While Verizon concedes that both the New York and Pennsylvania commissions directed that vertical features be recovered as part of the port charge -- which is consistent with commenters' views -- Verizon also contends that the New Jersey Board validly directed Verizon to recover vertical feature costs through the per-MOU switching rate.[104] Verizon argues that there is no requirement that vertical feature costs be recovered in the port rate.[105] We agree that there is no such requirement.

41. As an initial matter, we note that, while we have approved section 271 applications in states that allow for recovery of vertical features through the port charges, we have never established that this is the only TELRIC-compliant method for doing so. Indeed, were we to accept WorldCom's and AT&T's arguments, we would establish a requirement that conflicts with the Commission's UNE rate structure rules. These rules provide that the costs of dedicated facilities shall be recovered through flat-rated charges[106] and that the costs of shared facilities shall be recovered through either usage-sensitive charges or flat-rated charges "if the state commission finds that such rates reasonably reflect the costs imposed by the various users."[107] In the *Local Competition Order*, we recognized that it is appropriate to recover the costs of shared facilities from customers sharing the facility through either usage-sensitive or flat-rated charges.[108] The Commission's rules also provide that local switching costs shall be

[101] *Local Competition Order*, 11 FCC Rcd at 15874, para. 743.

[102] WorldCom NJ I Comments at 10; AT&T NJ I Comments at 15. AT&T incorporated by reference its NJ I comments in NJ II. *See* AT&T NJ II Comments at 1 n.1.

[103] *See* WorldCom NJ I Frentrup Decl. at para. 13; AT&T NJ I Comments at 15 and n.8.

[104] Verizon NJ I Garzillo/Prosini Reply Decl. at para. 12.

[105] *Id*; Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-347, at 1-2 (Feb. 20, 2002) (Verizon NJ I Feb. 20 *Ex Parte* Letter).

[106] 47 C.F.R. § 51.507(b).

[107] *Id.* § 51.507(c).

[108] *Local Competition Order*, 11 FCC Rcd at 15878, paras. 755, 757, 810.

recovered through a combination of a flat-rated charge for line ports, which are dedicated facilities, and one or more flat-rated or per-minute usage charges for the switching matrix and trunk port, which are shared facilities.[109] In this respect, no commenter has stated that vertical features are provided over wholly dedicated facilities, nor have they provided evidence that the per-minute charge is inconsistent with the manner in which costs are incurred. Under our rules, the New Jersey Board could have properly directed Verizon to recover the costs of vertical features as part of flat-rated port charges, split the costs between the flat and per-minute switch elements, or recover the costs through the per-minute charge. The New Jersey Board's decision to allow the recovery of such costs in the per-minute switching rate fully complies with our rate structure rules. We find no TELRIC error in the New Jersey Board's handling of the vertical features costs issue.

42. *Switch Discounts*. WorldCom also claims that Verizon has overstated its switching costs by using an inappropriate switch vendor discount.[110] The New Jersey Board directed Verizon to compute its switching costs as if 79.4 percent of the switches would receive the discount for purchases of new switches and 20.6 percent would receive the discount for purchases of growth switches.[111] WorldCom contends that, in the Universal Service proceeding, the Commission determined that the appropriate discount for TELRIC purposes was the discount for purchases of 100 percent new switches.[112]

43. We do not agree with WorldCom that Verizon should be required to assume 100 percent new switches. First, we have not previously required LECs to make such an assumption. In past section 271 orders, we have approved switching rates calculated on the basis of a mix of new and growth switches discounts.[113] Second, WorldCom does not argue that, under the specific facts in New Jersey, a different split of new to growth discounts would be more appropriate. It asserts simply that only new switch discounts are appropriate. We reject this position. A state commission may take into account that there will be growth in a network in the future and that it may not be cost-effective to acquire all of the projected switching capacity needed over the life of the switch at the outset. Finally, we conclude that this issue is a fact-specific inquiry amenable in the first instance to determination by the state commissions; it is not a bright-line rule. We have been presented with no evidence or rationale, beyond bare assertions, that would persuade us that the split chosen by the New Jersey Board amounts to a TELRIC error.

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109 *Id.* at para. 810; 47 C.F.R. § 51.509(b).

110 WorldCom NJ I Frentrup Decl. at para. 15.

111 *New Jersey BPU Summary Order* at 8.

112 WorldCom NJ I Frentrup Decl. at para. 15 (citing *USF Tenth Report and* Order, 14 FCC Rcd at 20289-90, para. 317).

113 *BellSouth Georgia/Louisiana Order* at paras. 78-83; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6274-75, para. 77; *Verizon Massachusetts Order*, 16 FCC Rcd at 9004-05, para. 33. Switch vendors often provide a greater discount for new switches and smaller discounts for growth of existing switches.

44. In addition, we have stated that inputs used in our Synthesis Model are not binding on states for determining prices for UNEs.[114] We are satisfied that the New Jersey Board carefully evaluated this issue, properly rejected Verizon's proposed use of 100 percent growth switches, and validly established what it considered to be more appropriate and state-specific switching discounts.[115] Accordingly, we reject WorldCom's argument.

45. *Switching Rate Calculation.* WorldCom contends that Verizon improperly calculates its switching cost by dividing by minutes associated with only 251 business days in a calendar year.[116] Switching costs would decrease by 18.5 percent or more, according to WorldCom, if Verizon assumed that usage on non-peak days is even half the level of usage on peak days.[117] WorldCom argues that we should require Verizon to reflect usage on all days or offer free switching usage during off-peak periods.[118]

46. Verizon's switching model recognizes that switches must be designed to meet the capacity requirements of the busiest hour of each day.[119] This "busy hour" determination, according to Verizon, is relevant in both sizing the switch and determining the manner in which costs should be spread among users.[120] The Verizon switching cost study develops a busy hour-to-day-usage ratio (BHDR), which Verizon uses as a basis to spread the investment over annual usage.[121] The New Jersey Board approved Verizon's switching cost study after directing Verizon "to re-run its switching model using the Board-approved inputs."[122] WorldCom argues that Verizon should use more than 251 days in calculating switching cost.

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[114] *Bell Atlantic New York Order*, 15 FCC Rcd at 4085, para. 245 ("[The] federal cost model was developed for the purpose of determining federal universal service support, and it may not be appropriate to use nationwide values for other purposes, such as determining prices for unbundled network elements. We specifically cautioned parties from making any claims in any other proceedings based on the inputs adopted in the *Universal Service Tenth Report and Order*."); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

[115] *New Jersey BPU Summary Order* at 8.

[116] WorldCom NJ I Comments at 9-10; WorldCom NJ II Comments at 6-8.

[117] WorldCom NJ I Comments at 10; WorldCom NJ I Frentrup Decl. at para. 12. *See also* WorldCom NJ I Reply Comments at 4.

[118] WorldCom NJ I Frentrup Decl. at para. 12.

[119] Verizon NJ I Garzillo/Prosini Reply Decl. at para. 14.

[120] *Id.* The cost study develops a "busy-hour"-usage-to-annual-usage ratio (BHAR). *Id. See also* Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at 1 (filed June 20, 2002) (Verizon NJ II June 20 *Ex Parte* Letter) ("[T]he BHAR is one of several different inputs that are used to develop the current switching costs.").

[121] *Id.*

[122] *New Jersey BPU Summary Order* at 9.

47. Verizon contends that, while its use of busy hour minutes allows for proper switch sizing, these minutes exceed those passing through the switch during all non-busy hours of the week and weekend. Verizon also shows that switching prices would increase if it used 270 days with a BHDR of ten percent,[123] instead of 251 days with a BHDR of roughly 7.5 percent, which it says is based on actual usage data in New Jersey.[124] Verizon chose the 10 percent BHDR for purpose of this comparison because that is allegedly an input that WorldCom and AT&T have advocated in other comparable proceedings.[125]

48. In confronting the same issue, the New York commission approved 308 days.[126] In our view, provided that an incumbent LEC's methodology is reasonable and consistent, TELRIC does not by itself dictate the use of a particular number of days, whether 308, 251, or some other number. The record raises serious questions concerning Verizon's use of 251 days in conjunction with the other inputs in Verizon's model and how the rates are applied. We need not resolve this dispute concerning appropriate modeling inputs. As we show below, even if the New Jersey Board erred in approving Verizon's use of 251 days together with other inputs, Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York and therefore fall within the range that reasonable application of TELRIC principles would produce.

49. *Benchmark Analysis.* States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that correct application of TELRIC principles would produce.[127] The Commission has stated that, when a state commission does not apply TELRIC principles or does so improperly, it will look to rates in other section 271-approved states to see if the applicant's rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.[128] To determine whether a comparison is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for

[123] Verizon NJ I Feb 20 *Ex Parte* Letter at 4.

[124] *Id.*

[125] *Id.* (claiming that AT&T and WorldCom have argued elsewhere that a BHDR of 0.100 is a recognized industry standard)

[126] New York PSC, *Proceeding on Motion of the Commission To Examine New York Telephone Company's Rates for Unbundled Network Elements*, No. 98-C-1357, Order on Unbundled Network Element Rates at 36-39 (Jan. 28, 2002).

[127] *Verizon Rhode Island Order*, 17 FCC Rcd at 3319-20, para. 37.

[128] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82. As we have already discussed, commenters raise significant issues concerning the propriety of Verizon's use of 251 days to calculate a switching rate. *See* WorldCom NJ II Comments at 6-8. Because we conclude below that Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York, we need not resolve this issue.

comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant or an appropriate benchmark.[129]

50. In this application, Verizon chooses to rely on a benchmark comparison of its rates in New Jersey to those in New York.[130] We agree that New York is similar to New Jersey in terms of both geography and rate structure, and, significantly, no commenter contends otherwise. In the *Rhode Island Order*, we commended the New York commission for the thoroughness of its recent rate docket and found that New York was an appropriate benchmark state for Rhode Island.[131] In light of that conclusion, our finding that New York and New Jersey share certain similarities, and the absence of any objection from the parties, we find that it is appropriate to rely on New York for our benchmark comparison.[132]

51. In our benchmark analysis of Verizon's non-loop UNE prices, we compare (1) the percentage difference between its New Jersey and New York UNE-platform per-line per-month prices for non-loop rate elements collectively, and (2) the percentage difference between New Jersey and New York per-line per-month costs for these non-loop elements collectively, based on the Synthesis Model.[133] For purposes of this comparison, UNE-platform non-loop rate elements are line port, end office switch usage, common transport (including the tandem switch), and signaling.[134] We develop per-line per-month prices for these elements for New Jersey and New York separately by multiplying the state-approved "rates" by per-line demand estimates. State-approved rates for end office switching and transport are imposed on a MOU basis. We develop the per-line per-month overall demand for these usage-sensitive rate elements for New Jersey and New York separately by first dividing total state-specific switched access lines into state-specific

[129] *See Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 56; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. In the *Pennsylvania Order*, we found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64. *See also Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

[130] Verizon does not concede that the New Jersey Board made TELRIC errors. Verizon NJ II Application at 6-7.

[131] *Verizon Rhode Island Order*, 17 FCC Rcd at 3324-27, paras. 48-53.

[132] *See also id.* at 3326-27, para. 53 (finding that New York is a reasonable benchmark state). Verizon and other BOCs may also demonstrate the propriety of their rates resulting from a state rate proceeding that correctly applies TELRIC principles without regard to any benchmark analysis.

[133] We adjust the costs derived from the Synthesis Model to make them comparable to UNE-platform costs. *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249. We benchmark non-loop rates apart from loop rates. *See, e.g., id.* at 17458, para. 66; *Verizon Massachusetts Order*, 16 FCC Rcd at 9000-02, paras. 23-27.

[134] We also note that Verizon's New York non-loop rates contain both a digital and an analog port rate. For purposes of our benchmark analysis, we have used Verizon's New York digital port rate of $2.57, rather than the analog port rate of $4.22, or any blend of the two rates. The New York rate structure uses the digital port rate of $2.57 as the rate charged for ports that are purchased as part of the UNE-platform.

total annual MOU, based on dial equipment minutes (DEM),[135] divided by 12 months.[136] We then apply to each of the usage sensitive rate elements a percentage of this overall demand that is based on state-specific traffic assumptions supplied by Verizon regarding originating versus terminating, local intra-switch versus inter-switch, and tandem-routed versus direct-routed MOU.[137]

52. We reject WorldCom's contention that Verizon's rates fail a benchmark comparison with New York rates if switching rates (port and end office usage) are considered separately from transport rates.[138] While we believe that aggregating per-minute switching with other non-loop rates such as port, signaling, and transport rates appropriately accounts for, among other things, rate structure differences between states, we need not resolve our disagreement with WorldCom here. Even under WorldCom's approach, we find that Verizon's New Jersey switching rates pass a benchmark comparison to those in New York. Specifically, we find that switching costs in New Jersey, as derived from the Synthesis Model, are roughly four percent higher than those in New York and that New Jersey switching prices are roughly the same as those in New York.[139] For purposes of this comparison, we included line and trunk ports because these assets are part of the end office switch. We included signaling in this analysis because signaling costs are recovered in the end office usage switching rates in New Jersey while they are recovered in a separate signaling rate element in New York. WorldCom's approach does not account for this rate structure difference. In addition, signaling prices and costs are typically a small fraction of the combined price and cost for line and trunk ports, end office switch usage, and signaling. In New York, for example, signaling prices are approximately only one percent of the combined price for line and trunk ports, end office switch usage, and signaling.

53. We also disagree with Worldcom that, in this application, we should use standardized MOU and traffic assumptions (*i.e.*, demand assumptions) as opposed to state-specific demand assumptions to develop per-line per-month prices as part of the benchmark

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[135] 47 C.F.R. § 36.125(a)(3) (defining DEM as "the minutes of holding time of the originating and terminating local switching equipment").

[136] In New Jersey, the common transport rate is imposed per-MOU per-mile. The demand we apply to the rate for this element reflects common transport MOU per-line per month multiplied by average common transport mileage. We use Verizon's estimate for common transport mileage for this calculation. *See* Verizon NJ II Application, App. B, Supplemental Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ II Garzillo/Prosini Supp. Decl.), Attach. 9.

[137] *See* Verizon NJ II Garzillo/Prosini Supp. Decl. at Attach. 9; Verizon NJ II May 2 *Ex Parte* Letter. For local calls, we use a local terminating switching rate of $0.001885 per minute in our benchmark analysis, and, for access calls, we use a terminating switching rate of $0.002508 per minute. *See* Verizon NJ I Feb. 28 *Ex Parte* Letter; Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed April 29, 2002) (Verizon NJ II April 29 *Ex Parte* Letter).

[138] *See* WorldCom NJ II Comments at 5-6.

[139] The price difference that we calculate is based on state-specific DEM and state-specific traffic assumptions.

analysis.[140] Under the Commission's TELRIC rules, the formula for a UNE rate is total cost divided by total demand.[141] UNE rates are set by state commissions based on state-specific costs and demand. The UNE rates therefore necessarily reflect state-specific MOU and traffic assumptions. Use of state-specific MOU per-line and traffic assumptions to develop per-line per-month UNE-platform prices for a benchmark state and an applicant state is therefore consistent with the manner in which states establish the UNE-platform rates. In addition, we note that the purpose of TELRIC is to determine the total costs and total demand for the incumbent LEC's entire local exchange network.[142] Per-unit TELRIC prices reflecting all of these costs and demand would, if imposed on all incumbent LEC's subscribers, precisely allow for total cost recovery. We also similarly reject WorldCom's argument that it is inappropriate to use lower demand figures for New Jersey than New York in making our comparison, based on the lower actual usage in New Jersey. To the extent that switch costs are appropriately recovered through per-minute rates, a state with lower usage will require higher per-minute rates. Our analysis captures this effect. While we conclude that it is reasonable to use state-specific demand assumptions in this application, we note that use of the standardized demand assumptions in the *Pennsylvania Order* may also be reasonable depending on the particular section 271 application under review.[143] The absence of valid state-specific demand data, for example, might be a reason to use the Commission's standardized demand assumptions.

54. We also reject WorldCom's argument that, in the benchmark analysis, we should use the MOU of any particular competitive LEC's typical customer.[144] We develop the per-MOU per-line per-month numbers from total incumbent LEC DEM and total incumbent LEC switched access lines. These numbers represent the typical or average LEC customer's demand in a given service area for both the incumbent and competitive LECs.[145] We use this demand for several

[140] WorldCom NJ II Comments at 3.

[141] *Local Competition Order*, 11 FCC Rcd at 15847, para. 682.

[142] *Id.*

[143] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 67 n.252.

[144] WorldCom NJ II Comments at 2-6.

[145] The DEM that we use for Verizon in the benchmark analysis include all MOU for retail lines, resale lines, official lines (*i.e.*, lines used for Verizon's internal purposes), and UNE-platform lines. The switched access lines that we use also include these lines. *See* Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed May 2, 2002) (Verizon NJ II May 2 *Ex Parte* Letter). WorldCom states that "Verizon calculates a significantly lower level of usage per line in New York than WorldCom's actual residential experience [because] its usage levels include business, public retail, resale and UNE-P lines along with residential lines." WorldCom NJ II Comments, Declaration of Vijetha Huffman, at para. 5 (filed April 8, 2002) (WorldCom NJ II Huffman Decl.). As discussed above, we conclude that the incumbent LEC's average customer demand provides an appropriate estimate of a potential competitive LEC's customer demand for the broad range of possible competitive LEC marketing strategies. To the extent WorldCom intends this declaration to establish that certain lines should not be included in the calculation of the typical or average customer demand used for benchmark comparisons because they do not reflect potential CLEC customers, we find this evidence does not support the claim. WorldCom has not differentiated such (continued....)

reasons. First, we recognize that any competitive LEC has the opportunity to compete for any of the incumbent LEC's customers. Different competitive LECs may have different marketing strategies, and there is no limit to the number of such strategies. The incumbent LEC's average customer demand, including the demand of competitive LECs using its switches, as developed from total DEM and total switched access lines, fully reflects the diverse demand characteristics of the incumbent LEC's enormous customer base. It therefore provides the single most informed estimate of a potential competitive LEC customer's demand for the broad range of possible competitive LEC marketing strategies. Second, as competitive LECs' market shares grow, we expect that average competitive LEC customer demand will grow to resemble the average incumbent LEC customer's demand. Third, use of the typical customer demand of all customers using the incumbent LEC's switch has the advantage of simplicity. It also does not favor any particular competitive LEC's marketing strategy; some competitive LECs may target high-volume customers, while others may target low-volume customers. Fourth, we apply average incumbent LEC customer demand to usage-sensitive rates in the benchmark analysis because the TELRIC formula from which these rates are developed, *i.e.*, total network cost divided by total network demand, produces average incumbent LEC (forward-looking) cost. Fifth, DEM data is publicly available and easily verifiable. By contrast, in states such as New Jersey, where competitive LEC entry has not been extensive, state-specific competitive LEC MOU data may not be available or may not be large or broad enough to perform a reliable benchmark analysis. Finally, use of state-specific incumbent LEC DEM data is also consistent with our recent benchmark analysis in the *Rhode Island Order*.[146]

55. Having rejected WorldCom's contentions concerning benchmark methodology and having found that New York is an appropriate benchmark state, we find that New Jersey's non-loop rates are roughly six percent lower than New York non-loop rates. We also find that New Jersey non-loop costs are roughly one percent higher than New York non-loop costs, after taking a weighted average of New Jersey and New York costs derived from the Commission's Synthesis Model. Therefore, we conclude that New Jersey's non-loop rates pass a benchmark comparison to New York's non-loop rates and that they therefore satisfy our benchmark analysis and the requirements of checklist item two.

(iii) Daily Usage File Rates

56. The Daily Usage File (DUF) is an optional Verizon billing service that provides files containing records of local and intraLATA toll usage to competitive LECs for timely and accurate billing of services to the end user.[147] AT&T argues that Verizon's DUF rates are inflated

(Continued from previous page)
lines with particularity, established why such lines do not reflect potential CLEC customers, or demonstrated that removal of such lines -- and corresponding DEM data -- would have a measurable effect on the typical or average customer demand used for the benchmark comparison before us in this proceeding.

[146] *Verizon Rhode Island Order*, 17 FCC Rcd at 3327, para. 55 n.149.

[147] *See* AT&T NJ II April 30 *Ex Parte* Letter at 3 n.4.

and do not comply with TELRIC.[148] Specifically, AT&T alleges that Verizon's DUF rate calculation contains a math error that improperly inflates DUF rates.[149] AT&T also alleges that these rates over-recover certain "CLEC Support" labor costs that are spread over a small fraction of the number of messages actually processed within Verizon's system.[150]

57. With respect to the alleged mathematical error, Verizon has recently filed a correction with the New Jersey Board.[151] We therefore reject AT&T's claim concerning this error.

58. In addition, AT&T alleges that Verizon over-recovers the labor costs associated with the 13 employees who provide "CLEC Support."[152] According to AT&T, Verizon recovers such costs once in the expense factors within the annual cost factor (ACF) and again in the DUF rate.[153] Verizon states that it removed the labor costs associated with the Central Billing Organization, which is involved in providing DUF services.[154] Verizon also states that "even if Verizon removed the labor costs for all 13 equivalent workers contained in the DUF study, the Other Support factor would not materially change (0.0446 compared to 0.0447)."[155] Assuming that the labor costs were not removed, as AT&T claims,[156] and that the difference is material, whether Verizon should remove the disputed labor costs from the DUF rate alone or should re-calculate the ACF and all recurring rates affected by this ACF change is, we believe, a local rate design decision for the New Jersey Board in the first instance. In any event, consistent with prior section 271 orders, we conclude that AT&T has presented no evidence that the New Jersey Board

[148] *Id.* at 3-4. *See also* AT&T NJ II Comments at 11-14.

[149] AT&T NJ II Comments, Exh. A, Declaration of Michael R. Baranowski (AT&T NJ II Baranowski Decl.) at paras. 11-12. AT&T claims that the calculations for Verizon's "DUF Network Data Mover Cost Per Message" contains an error in the calculation of the DASD (DISK) Maintenance component that overstates the costs of that DUF rate component by nearly 100 times. *Id.* at para. 11. *See also* AT&T NJ II April 30 *Ex Parte* Letter at 3.

[150] AT&T also alleges that Verizon fails to justify CLEC support costs reflecting the work of 13 full-time employees and costs for the "Regional CBO Message Demand." *Id.* at paras. 12-14. *See also* AT&T NJ II April 30 *Ex Parte* Letter at 3-4.

[151] *See* Letter from Clint E. Odom, Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67, at Attachs. 1 and 2 (filed May 8, 2002) (Verizon NJ II May 8 *Ex Parte* Letter). If AT&T believes that the error has not been corrected, the New Jersey Board is the most appropriate entity to address AT&T's concerns in the first instance.

[152] AT&T NJ II Baranowski Decl. at para. 12.

[153] *Id.*

[154] Verizon NJ II June 7 *Ex Parte* Letter at 5.

[155] Verizon NJ II Reply Comments, Tab D, Supplemental Reply Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ II Garzillo/Prosini Reply Decl.) at para. 51.

[156] AT&T NJ II June 18 *Ex Parte* Letter at 5.

did not conform to TELRIC principles "simply because it [allegedly] failed to modify one input into its cost model."[157]

59. We are also not persuaded by AT&T's simple comparison of DUF rates in various states.[158] As AT&T acknowledges, the Commission has not found such comparisons persuasive in the past.[159] AT&T claims, however, that the alleged presence of undocumented labor costs in the DUF rates amounts to a TELRIC error and that such evidence of error warrants our consideration of a comparison in this instance.[160] Consistent with our precedent on this issue, however, we disagree that a state-to-state comparison is appropriate concerning this DUF dispute.[161] Other than AT&T's bare claims, there is no evidence before us suggesting that Verizon's labor costs are not supported or that the New Jersey Board committed any TELRIC error. Absent such evidence, we find that Verizon's DUF rate falls within a reasonable TELRIC range.

60. AT&T did not raise these issues before the New Jersey Board, and it has only recently challenged Verizon's DUF rates in a motion for reconsideration of the Final UNE Rate Order. AT&T's motion is presently pending before the New Jersey Board. The New Jersey Board should have the opportunity to evaluate AT&T's evidence and make any adjustments it finds appropriate. Our deference to the New Jersey Board in this instance is consistent with our treatment of the same issue in the *Vermont Order*.[162] We commend the New Jersey Board's commitment to TELRIC principles, defer to the New Jersey Board's forthcoming resolution of the DUF rate, and find no TELRIC error on the record before us on this issue.[163]

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[157] *Bell Atlantic New York Order*, 15 FCC Rcd at 4085, para. 245. *See also AT&T v. FCC*, 220 F.3d at 617.

[158] AT&T NJ II Reply Comments at 8 and n.10. We note that our benchmark analysis does not extend to DUF rates.

[159] *Id.* at 8 n.9 (citing to *Verizon Vermont Order* at para. 26).

[160] *Id.* at 8.

[161] *See Verizon Vermont Order* at paras. 26, 27.

[162] *Id.* at para. 37. Similarly, in the *Bell Atlantic New York Order*, we deferred to the state's intention to address additional evidence regarding the appropriate switch discount value. *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247. We concluded that the commenter "presented no evidence that the New York Commission's ongoing examination of the switch discount issue betoken[ed] a failure to set TELRIC-compliant rates." *Id.* (quotations and citations omitted). The D.C. Circuit Court of Appeals affirmed our conclusion, finding that "rates may often need adjustment to reflect newly discovered information." *AT&T v. FCC*, 220 F.3d at 617.

[163] AT&T retains the ability to take action pursuant to section 271(d)(6) if AT&T believes that the New Jersey Board ultimately approves a rate that does not comply with our rules. *Cf. Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30.

c. Non-Recurring Charges

61. *"Hot Cut" Charges.* AT&T, ASCENT, the NJDRA, and XO challenge Verizon's "hot cut" charges. A hot cut is the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch.[164] The "cut" is said to be "hot" because telephone service on the specific customer's loop is interrupted for a brief period of time, usually fewer than five minutes, during the conversion process.[165]

62. On March 6, 2002, the New Jersey Board formally approved Verizon's six hot cut rates in a range of $159.76 to $184.82, depending on the type of hot cut.[166] Effective March 20, 2002, however, Verizon lowered these rates to $35.00 for each type.[167] The reduced rate does not include surcharges for manual order handling, expedited treatment, or premises visits.[168] In announcing the rate change, Verizon initially stated that the lower rate "will be in effect until either the sooner of two years or the Board's final resolution of the AT&T motion regarding hot cut pricing in this proceeding, unless the Board otherwise modifies the rate."[169] On May 8, 2002, Verizon dropped the latter condition so that the $35 hot cut rate in New Jersey is now in effect until at least March 1, 2004.[170]

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[164] Department of Justice NJ I Evaluation at 7 n.28; XO NJ I Comments at 17-18.

[165] XO NJ I Comments at 18.

[166] *New Jersey BPU Final UNE Rate Order*, Attachment (rate sheet). For ease of discussion, we refer to all of Verizon's various New Jersey hot cut rates collectively as the "$159.76 hot cut rate." This shorthand reference to Verizon's hot cut rates has no effect on our substantive analysis.

[167] Verizon NJ II Application at 16; Verizon NJ II Application, App. A, Tab B, Supplemental Declaration of Patrick A. Garzillo and Marsha S. Prosini (Verizon NJ II Garzillo/Prosini Decl.) at para. 4 & attach. 1 (listing the six types of hot cuts: two-wire; four-wire; ADSL/HDSL; DDS/56KD; IDLC to copper; and line port). Verizon derives the $35 hot cut rate by crediting competitors with the difference between $159.76 and $35. Verizon NJ II Garzillo/Prosini Decl., Attach. 1 at 1, 3. The credit does not apply to non-expedited or non-premises visit hot cuts. *Id.* That the $35 credit is only available for non-expedited, non-premises hot cuts does not violate our TELRIC principles. There is no evidence in this record that Verizon may not validly charge more for hot cuts requiring more work or special handling. In any event, the New Jersey Board is currently considering hot cut-related pricing issues in connection with a pending motion for reconsideration, *see* Verizon NJ II Application at 16, and, consistent with our precedent, we defer to the state's handling of this issue, *see, e.g.*, *Verizon Pennsylvania Order*, 16 FCC Rcd at 17478, para. 108; *Verizon Vermont Order* at para. 37.

[168] Verizon NJ II Garzillo/Prosini Decl., Attach. 1 at 1, 3.

[169] *Id.* at 2.

[170] *See* Verizon NJ II May 8 *Ex Parte* Letter and Attach. 3.

63. Commenters argue that the $35 hot cut rate is not TELRIC-compliant.[171] They contend generally that the hot cut rate is merely a temporary credit that does not comport with TELRIC principles.[172] AT&T argues that the New Jersey Board never approved the $35 hot cut rate and that a TELRIC-compliant rate should be no more than $4.35.[173] AT&T also asserts that the $35 hot cut rate is higher than the hot cut rates in five other Verizon states, that the $35 rate cannot be justified by reference to the New York $35 hot cut rate, which was the product of a negotiated settlement, and that Verizon has made no binding commitment to offer the $35 rate in New Jersey.

64. The New Jersey Board rejected AT&T's evidence concerning Verizon's non-recurring cost model that generated the hot cut rate.[174] In rejecting AT&T's proposed non-recurring cost model, the New Jersey Board found that AT&T's alternative non-recurring cost model "identified far fewer rate elements than the Verizon NJ Model and assume[d] away a number of potential costs on the premise that they should have been included as part of recurring costs and/or are unnecessary in a forward-looking environment due to mechanized improvements."[175] In this proceeding, AT&T has not presented persuasive evidence that the New Jersey Board committed clear error in rejecting its cost model or approving Verizon's non-recurring cost model. We are therefore not persuaded, based on the current record, by AT&T's contention that a hot cut should cost less than $5.00.[176]

65. During the NJ I proceeding, Verizon's $159.76 hot cut rate generated considerable controversy. Although Verizon continues to argue in NJ II that this rate is Board-approved and TELRIC-complaint, it voluntarily agreed to reduce the effective rates for six hot cut charges to $35.00. The $35.00 hot cut rate is a rate selected by Verizon and that has gone into effect in New Jersey. Our task is not, as AT&T claims, to determine whether $35.00 or some other rate most complies with TELRIC, but rather to determine whether $35 falls within a reasonable TELRIC range. Our review here is also not *de novo*, as we have said many times before. Upon review, we find that Verizon's $35.00 hot cut rate in New Jersey is within the reasonable range that application of TELRIC principles would produce.

66. First, the $35.00 hot cut rate, which mirrors the effective rate in New York, bears the imprimatur of the New York PSC as well as the numerous competitive LECs who joined that settlement, including AT&T itself. We have already found that New York is an appropriate

[171] *But see* Allegiance NJ II Comments at 1 ("Allegiance commends Verizon for voluntarily reducing its non-recurring charge for hot cuts to $35.00.").

[172] *See, e.g.*, AT&T NJ II Comments at 7-11.

[173] *Id.* at 8-9.

[174] *New Jersey BPU UNE Rate Order* at 157-59.

[175] *Id.* at 157.

[176] AT&T NJ II Comments at 8 & n.6.

benchmark state for non-loop rate purposes, which gives us additional comfort that the $35 hot cut rate in New Jersey and the $35 hot cut rate in New York can be appropriately compared.[177]

67. Second, while AT&T argues vehemently that the New York hot cut rate should not be viewed in isolation,[178] AT&T itself presented evidence that the $35.00 hot cut rate in New Jersey falls within a reasonable range. AT&T introduced substantial expert testimony in NJ I, which it incorporated by reference in NJ II,[179] explaining that its business plan for entering the New Jersey residential market substantially depends on the existence of a cost-based hot cut rate.[180] AT&T claimed that it could compete with Verizon in the New Jersey residential market with a hot cut rate priced in the $30-$33 range, in line with Verizon's rate for a two-wire initial installation, over $130 lower than the then-existing hot cut rate of $159.76.[181] Indeed, AT&T stated that it had planned to implement its market entry strategy in New Jersey when Verizon charged $32.16 to perform a hot cut, but that it was forced to abandon that strategy only after the New Jersey Board approved a higher hot cut rate of $159.76.[182] Having argued that a hot cut charge in the range of $30-$33 would be appropriate in New Jersey and would pose no barrier to market entry, AT&T cannot now ask us to find that a hot cut rate of $35 clearly falls outside an acceptable TELRIC range. AT&T provides no evidence that the line between TELRIC and non-TELRIC pricing for a hot cut charge in New Jersey falls somewhere between the $30-$33 rate it previously found acceptable and the $35 rate it now finds objectionable. AT&T's argument is not credible, and we therefore reject AT&T's claim that $35 falls outside a reasonable TELRIC range.

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[177] Letter from David L. Lawson, counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (April 26, 2002) (AT&T NJ II April 26 *Ex Parte* Letter), Supp. Decl. of Richard J. Walsh at para. 18 n.19. *See also SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20753-54, para. 71 & n.207; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266-68, paras. 60-61.

[178] *See* AT&T NJ II Comments at 9-11.

[179] *Id.* at 1 n.1.

[180] *See* AT&T NJ I Comments, Exh. A, Declaration of Stephen G. Huels (AT&T NJ I Huels Decl.) at para. 4 (explaining that "Verizon's [$159.76] hot cut non-recurring charge will undermine AT&T's ability to carry out" AT&T's business strategy in New Jersey); AT&T NJ I Comments at 13 ("Verizon's overstated hot cut NRCs threaten any facilities-based local business and residential entry plan in New Jersey.").

[181] *See* AT&T NJ I Comments, Exh. B, Declaration of John Sczepanski (AT&T NJ I Sczepanski Decl.) at para. 9 ("Verizon's [$159.76] hot cut NRC creates a significant barrier to AT&T's local telephone entry plans by inflating AT&T's per line cost of migrating customers from UNE-P based services to UNE-L based services by nearly 400 percent (from $32.16/line to $159.76/line)."); AT&T NJ I Comments at 13 ($159.76 - $130.30 = $29.46). In presenting this evidence, AT&T acknowledges that hot cut rates in the range of $29.46-$32.16 would not create a barrier to market entry.

[182] AT&T NJ I Sczepanski Decl. at para. 8 (stating "AT&T had already begun to carry out its UNE-P to UNE-L migration plan – in anticipation of reduced New Jersey UNE rates at the conclusion of the recent UNE rate case in New Jersey – by making substantial investments in network equipment to carry out that plan," but noting that "Verizon and the New Jersey [BPU] effectively halted" that plan by "substantially increasing Verizon's hot cut NRC by almost 400 percent").

68. Finally, the New Jersey Board is presently considering AT&T's motion for reconsideration of the hot cut rate and will have an opportunity to weigh AT&T's evidence of the appropriate rate level. While the New Jersey Board made findings that cast some doubt on the $159.76 hot cut rate,[183] it also made a determination that some significant amount of work was involved in performing a hot cut.[184] We note that the $35 hot cut charge reflects a reduction of over 75 percent from the charge adopted by the New Jersey Board. These findings, in conjunction with the similarities between the New Jersey and New York hot cut rates, persuade us that the $35 rate falls within a reasonable TELRIC range. In any event, while we believe that the New Jersey Board should have the opportunity to evaluate the evidence itself, we also take comfort that the $35 hot cut rate will remain in effect until at least March 1, 2004. Our deference to the New Jersey Board is consistent with our treatment of this issue in the *SWBT Texas Order*, where we stated that we would not second-guess a state commission's responsibility to set hot cut charges.[185] Accordingly, we defer to the New Jersey Board's anticipated resolution of this matter and find no TELRIC error on the record before us in Verizon's $35 hot cut rate.[186]

69. *Feature Change Service Order Charge*. AT&T asserts that the $7.71 service order charge Verizon assesses on a competitive LEC whenever it adds or deletes a telephone

[183] *See New Jersey BPU Final UNE Rate Order* at 158.

[184] *See id.* at 157-58, 162. In approving the $159.76 hot cut rate, the New Jersey Board directed Verizon to modify eight critical inputs to Verizon's non-recurring cost model. These modifications, which are listed below, are evidence that the New Jersey Board agreed with Verizon that a hot cut required some significant amount of work. "(1) revise all travel times to 20 minutes; (2) adjust the time estimates for all additional lines to be equal to the time associated with the initial lines where the additional line is greater; (3) eliminate all computer connect times for additional lines in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial line; (4) eliminate all times associated with notifying a CLEC to complete an order in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial lines; (5) eliminate all times associated with scheduling teams, contacting CLEC, verifying service orders, obtaining CLEC approval, completing orders, and notifying the team of cancellations for all additional lines in recognition that the tasks for the initial and additional lines will be performed within the allotted time for the initial line; (6) revise to five minutes all times associated with gaining access to a premises, locating terminals, contacting the mechanized loop administration center, and working with the mainframe or regional CLEC coordination center; (7) eliminate all field installation charges associated with migration orders; and (8) eliminate all manual translation times that are made obsolete by the flow-through capabilities of Verizon's operations support systems." *Id.* at 162-63.

[185] *SWBT Texas Order*, 15 FCC Rcd at 18495, para. 277. Similarly, in the *New York Order*, the Commission deferred to the state's intention to address additional evidence regarding the appropriate switch discount value. *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247. The Commission concluded that the commenter "presented no evidence that the New York Commission's ongoing examination of the switch discount issue betoken[ed] a failure to set TELRIC-compliant rates." *Id.* (quotations and citations omitted). The D.C. Circuit Court of Appeals affirmed, finding that "rates may often need adjustment to reflect newly discovered information." *AT&T v. FCC*, 220 F.3d at 617.

[186] We note that the Commission retains its ability to take appropriate enforcement action pursuant to section 271(d)(6) if Verizon falls out of compliance with the requirements of section 271. *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30.

feature service, such as caller identification, does not comply with TELRIC.[187] In a fully electronic or automated system, according to AT&T, this charge might be as low as $0.27.[188] AT&T also notes that Verizon assesses an initial service order charge of only $0.83 when a competitive LEC requests installation of features in an initial service order.[189]

70. First, we are not persuaded by AT&T's comparison of Verizon's $7.71 service order charge for feature changes with Verizon's $0.83 service order charge for the initiation of new UNE-platform service or with AT&T's proposed $0.27 service order charge for feature changes.[190] While we agree that there are material differences between $7.71 and $0.83 (or $0.27), a simple rate comparison does not, by itself, demonstrate that the New Jersey Board failed to follow TELRIC principles in approving the $7.71 rate. We are also not persuaded by AT&T's argument that Verizon overstates the manual processes associated with competitive LEC order fallout that generate the service order charge.[191] Verizon accounted for order fallout by discounting its service order activity time estimate by over 86 percent.[192] While AT&T might prefer if this discount were greater, AT&T does not show that the New Jersey committed clear TELRIC error in approving Verizon's use of it. Absent such evidence, we have no basis to conclude that the New Jersey Board improperly approved Verizon's service order charge for feature changes.[193]

71. Second, unlike some other non-recurring charges such as hot cuts, which are imposed when a customer migrates to a competitive LEC's switch, a feature change service order charge is imposed only if a customer is already taking service from a competitive LEC. Even then, not all such customers request changes to their feature services. There is no evidence in the record that a feature change service order charge constitutes a barrier to market entry in the same way that a non-TELRIC hot cut charge could.

[187] AT&T NJ II Comments at 18. *See also* Verizon NJ II April 29 *Ex Parte* Letter.

[188] AT&T NJ II April 26, 2002 *Ex Parte* Letter at 2.

[189] *Id.* at 1.

[190] AT&T NJ II Comments, Exh. B, Declaration of Richard J. Walsh (AT&T NJ II Walsh Decl.) at para. 10.

[191] AT&T NJ II Walsh Supp. Decl. at para. 14.

[192] Verizon NJ II Garzillo/Prosini Reply Decl. at paras. 55-56; AT&T NJ II Walsh Supp. Decl. at Table 1.

[193] AT&T argues that non-recurring charges can be compared to those in other states. *See* AT&T NJ II Comments at 7-8 (*e.g.*, hot cut charges). Were we to compare Verizon's service order charges for a feature change in New York and New Jersey, we note that in New York the charge is $9.01, $1.30 higher than New Jersey's charge of $7.71. *See* Verizon NJ II Garzillo/Prosini Reply Decl. at para. 57. Because we do not find this comparison to be, by itself, dispositive of the issue of the TELRIC compliance of the service order charge, we need not determine the relevance of the alleged interim status of the $9.01 New York charge. *See* Letter from David L. Lawson, counsel, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-67 (filed June 19, 2002).

72. Finally, we note that AT&T has filed a motion for reconsideration of this issue with the New Jersey Board. We believe that the New Jersey Board should have the opportunity to evaluate the evidence itself and make adjustments it regards as appropriate.[194] In particular, the New Jersey Board may want to confirm that Verizon's use of an "averaging" methodology in calculating the $7.71 service order charge for feature changes generated a cost-based rate.[195] Consistent with prior orders, we defer to the state's resolution of this fact-specific question in the ongoing proceeding,[196] and we find no TELRIC error on the record before us in Verizon's $7.71 service order charge for feature changes.

73. For the foregoing reasons, we cannot conclude on the record before us that the New Jersey Board committed a TELRIC error in adopting Verizon's $7.71 service order charge for features changes, and, in any event, we defer to the New Jersey Board's resolution of AT&T's challenge to this non-recurring charge.

2. OSS

74. Checklist item 2 requires a BOC to demonstrate that competitors have nondiscriminatory access to the various systems, databases, and personnel (collectively referred to as OSS) that a BOC uses in providing service to its customers.[197] The Commission has identified five functional OSS domains: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.[198] Further, a BOC must show that it has an adequate change management process in place to accommodate changes made to its systems.[199] In assessing a BOC's OSS, we review its performance to determine both that its performance provided to all competing carriers in the aggregate is sufficient, and that its performance

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[194] The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted); *Verizon Vermont Order* at para. 15; *BellSouth Georgia/Louisiana Order* at para. 23. *See also Sprint v. FCC*, 274 F.3d at 556 ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct de novo review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

[195] *See* Verizon NJ II April 29 *Ex Parte* Letter at 2-3 (explaining averaging approach used for all elements in "loops" category); Verizon NJ II June 7 *Ex Parte* Letter at 6.

[196] We note that the Commission retains its ability to take appropriate enforcement action pursuant to section 271(d)(6) if Verizon falls out of compliance with the requirements of section 271. *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30.

[197] *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83.

[198] *Verizon Pennsylvania Order*, 16 FCC Rcd at 17425, para. 12; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82.

[199] *See Verizon Pennsylvania Order*, 16 FCC Rcd at 17425, para. 12; *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4000 para. 102 & n.277 (citations omitted).

provided to one or more carriers does not show discriminatory treatment. We find, as did the New Jersey Board, that Verizon provides non-discriminatory access to its OSS.[200]

75. To demonstrate that its OSS is handling current demand and will be able to handle reasonably foreseeable future volumes, Verizon relies upon a combination of evidence – New Jersey commercial usage, third-party testing, and performance of certain systems identical to those in other section 271-approved states. Specifically, in addition to New Jersey performance data, Verizon certifies that it provides competitive LECs in New Jersey with interfaces and gateways to the OSS common to those serving the rest of the former Bell Atlantic service area.[201] Verizon engaged KPMG Consulting (KPMG) to test the interfaces and OSS serving New Jersey. In addition, Verizon engaged PricewaterhouseCoopers (PwC) to conduct two attestation reviews of Verizon's BOS BDT formatted bills in New Jersey in September 2001.[202]

76. As an initial matter, although we acknowledge that there are substantial similarities between the OSS available to competitors in New Jersey and the OSS that we have approved in previous 271 applications filed by Verizon, we believe that certain factors require us to review closely the operational readiness of the OSS particular to New Jersey. First, most OSS transactions handled for New Jersey customers must be processed by a service order processor (SOP) unique to New Jersey.[203] While many of the interfaces, gateways, and some back office systems are common region-wide,[204] the SOP is different and, therefore, we must be confident that this difference has no material impact on Verizon's performance.[205] Second, a number of

[200] New Jersey Board NJ I Comments at 43.

[201] Verizon NJ I McLean/Wierzbicki/Webster Decl. at para. 8. This area includes states where the Commission found OSS checklist compliance as part of its section 271 approval. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17424-25, paras. 11-12; *Verizon Massachusetts Order*, 16 FCC Rcd at 9013-14, 9026, 9036-37, 9040-42, 9043-44, 9045-46, 9051, paras. 50, 70, 90, 95, 97, 102, 114; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82; *Verizon Connecticut Order*, 16 FCC Rcd at 14170, para. 51.

[202] First, PwC verified that the BOS BDT bill provided to competitive LECs in New Jersey contained the same key summarization points and key billing elements as the paper bill; contained the same dollar value for those summarization points and billing elements; and had enough detail to allow the billing elements to be recalculated. Verizon NJ I Application, App. B, Tab 4, Joint Declaration of Catherine Bluvol and Sammy Kumar (Verizon NJ I Bluvol/Kumar Decl.) at para. 6. Second, PwC certified that certain billing line items that were issues in the *Verizon Pennsylvania Order* – most notably, taxes, directory advertising in the form of carrier usage, and resale usage on UNE-platform accounts – have been effectively eliminated. Verizon NJ I Application, App. B, Tab 4, Joint Supplemental Declaration of Catherine Bluvol and Sammy Kumar (Verizon NJ I Bluvol/Kumar Suppl. Decl.), at para. 6.

[203] The SOP is the provisioning process system used for order entry. KPMG Final Report at 440. Among other functions, the SOP transmits information to other back office systems, such as the billing system.

[204] In October 2001, Verizon began to provide access to two new functions – loop make-up information and manual loop qualification. We recently examined these new processes, which are the same region-wide, and found them to be in compliance with section 271. *Verizon Rhode Island Order*, 17 FCC Rcd at 3328-29, paras. 61-63.

[205] Due to the integral role that the SOP plays in the operation of the OSS, serving as a hub to coordinate and route data between functions, our initial assessment of it in this proceeding is not constricted to ordering but encompasses (continued….)